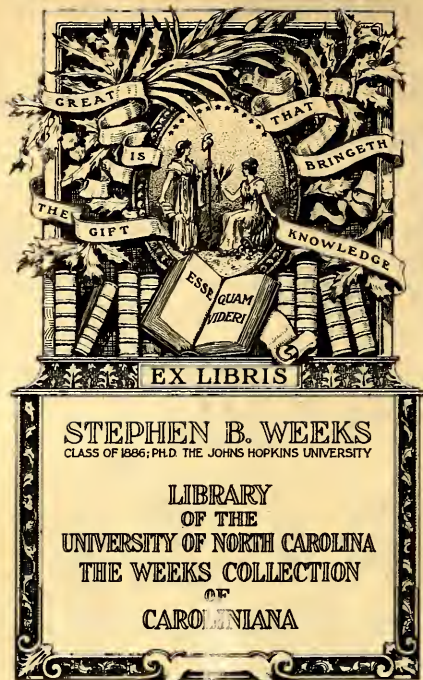


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Criticismo on Surrender of
Johnston's Army



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CRITICISMS

ON THE

Surrender of Johnston's Army,

WITH THE "MEMORANDUM" THEREON AS PRESENTED BY THE EXECUTIVE.

The public papers which defend General Sherman against the attacks made on him for his transaction with Johnston, including the capture and surrender of the rebel army, generally assume it as a foregone conclusion that he made a *mistake*, yet no one has shown us wherein the mistake consisted, and I venture to say that no one can show anything in the matter, either in principle or in detail, inception or result, to which the most punctilious can object. I refer, as a matter of course, to what he in fact did, not to what is assumed for him, or falsely imputed to him. The actual facts, plainly told, are these:—

On the 18th of April Sherman had Johnston so hemmed in that he must either fight or surrender. On that day, in this condition of things, the two Generals met and discussed not only the surrender of the army under Johnston, but the other Rebel forces in the South and West, in the expressed hope that they might save further effusion of blood. As the proposed action, except as far as concerned forces under the command of each was beyond their power, they agreed to a suspension of hostilities, their armies remaining in statu quo, until each could consult with and obtain the instructions of those in power, Sherman, of course, that of the President of the United States and his Cabinet. He reported at once, and received instructions to confine himself to the mere military surrender of the rebel troops in his power. He accordingly received the surrender of Johnston with his 27,000 men with their arms and munitions of war; precisely what he would have done had the Cabinet directed him not to negotiate, but without any attempt to excite a public clamor. This is all Sherman did and all he proposed to do until he should receive instructions from the Department. He held Johnston and his army firmly, he lost no advantage which he could have gained had he attacked Johnston immediately without negotiating, but saved no doubt the effusion of blood.

Now I am at a loss to find the mistake. Was it in the propositions which were sent to the President and Cabinet? *They* are greatly misrepresented in the Secretary's Bulletin. But

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it is no matter what they were, they came without authority. Sherman assumed none, but simply sent the proposition to be passed upon by the Cabinet. "Sigma," a very able writer in the Commercial, and one who represents the case fairly, is of opinion that the propositions were themselves the best practical. It may be so and probably is, but a year's experience will show us.

But in this matter General Sherman could hardly be charged with thinking for himself. The propositions submitted were conceived in the spirit of Mr. Lincoln's last speech, while General Sherman no doubt had seen as it was in all the public prints—and there is no proof and indeed no pretence that he had seen Mr. Lincoln's instructions to General Grant, with which the propositions are so elaborately contrasted in the Secretary's Bulletin. The propositions may be the best, or the worst possible, but in either case I have yet to learn that there was a *mistake* in making them known to the President.

T. EWING.

From the New York Leader.
SHERMAN'S ARMISTICE.

How much truth there may be, or whether there be any truth at all, in the current statements that Secretary Stanton has organized a crusade against Sherman we do not know. The *World* says that such a crusade is being attempted; the *Herald* says that it is not; the *Times* appears to join in the attack, and the *Tribune*, which might have been expected to treat Sherman cavalierly, steps promptly forward as his defender. In this muddle, only one thing seems to be certain, and that is the exceeding bad taste and bad temper of Secretary Stanton's telegrams upon the Sherman armistice.

If those telegrams have provoked any illfeeling towards General Sherman in the popular mind we have yet to see evidences of such a feeling. So far as we can learn, the ill-feeling is all against Stanton for the ungenerous manner in which he has presented the case. It would have been amply sufficient had he simply telegraphed to Major-General Dix, for publication, that Sherman had exceeded his orders and made an unsatisfactory agreement with Johnston; and that the agreement was disapproved by Grant, who had gone to North Carolina to resume hostilities. This statement embraces all the facts; but Secretary Stanton could not be content with it. He must sum the case up in advance, and get judgment before Sherman could be heard. In trying to do so he has demonstrated his own weakness and Sherman's strength.

We do not by any means impugn Secretary Stanton's motives. He may be Sherman's personal friend, for all we know. It is his style which is bad, although his motives may be as

pure as Sherman's patriotism. Hot-headed and impulsive, he rushed quickly to the conclusion that Sherman had made a blunder, and at once set to work to prove this conclusion correct. He would have been wiser had he considered his proofs first and reached his conclusion logically. Being a lawyer, he must form his theories and twist his evidence even in such an important State affair as the condemnation of one of our best and most popular generals. But the public must remember that Sherman is quite as shrewd and able a man as Stanton, and that his side of the case has yet to be heard. We object to these snap-judgments about anybody or anything. Let Sherman give the reasons for his course before people pronounce him a fool. And let those ultra Republican journals be very careful of their facts before they again insinuate that he is a knave.

Having attentively perused all the documents in regard to the armistice which have been officially published, we can discover no good grounds for Secretary Stanton's aggrieved tone, nor for the extraordinary instructions he has issued to subordinate officers not to obey Sherman's orders. When Sherman hears of those instructions he will undoubtedly hand his resignation to President Johnston, and either he or Stanton must retire. No matter how wrong General Sherman may have been, Secretary Stanton had no right to forward such instructions to his subordinates, except through Sherman himself. Two wrongs never make a right. If General Sherman has exceeded his authority, Secretary Stanton has violated military etiquette. He could have removed Sherman, but he could not properly instruct his subordinates to disobey him.—In his eagerness to put Sherman in the wrong, Mr. Stanton has placed himself in a peculiarly perplexing position. The spectacle of a Secretary of War bursting, like a mad bull, through the well-known rules of the service, is not particularly edifying to soldiers or civilians.

General Sherman and the Rebel General Johnston had several meetings and agreed upon terms which completely demolished the Rebellion. It is a mistaken idea that Johnston only surrendered his own army to Sherman, as Lee surrendered his to Grant. Johnston surrendered the entire Rebellion.—There was no reservation. Jeff Davis himself was not excepted. It may have appeared right to General Sherman to exceed his authority a little in order to accomplish this immense victory. That he may have overstepped his orders is granted—but it was in permitting an armistice, not in arranging an agreement to be sent to Washington for approval. This point—the only one at which Sherman is vulnerable—Mr. Stanton has overlooked altogether. He had the right to make a basis for peace; but perhaps he had no right to suspend hostilities.—The armistice, not the agreement, was an act which may have

called for censure. All Stanton's rigmarole about the presence of Mr. Lincoln at the capitol on the night of March 3d, and the note which he penned with his own hand, does not touch the real issue. Sherman's error was in declaring a truce; but for that he may have had satisfactory reasons.

The note of President Lincoln refers purely to "political questions." The surrender of all the Rebels in arms was a military question, and Sherman treated it like a military man. When the terms presented by the Rebels were found to embrace political questions, he neither accepted nor rejected them—he at once referred them to Washington. Why this should have aroused Secretary Stanton's wrath we are unable to perceive. Nor is the statement of Stanton's telegram—a statement since disproved—that Sherman's recall of Stoneman's cavalry opened the road to Mexico to Jeff. Davis and his treasures any more pertinent. Jeff Davis was with Johnston. He was included in the surrender. This fact vitiates Stanton's absurd rhetoric and suggests that, instead of quoting Lincoln's letter and a bit of Richmond gossip, the Secretary of War would have occupied his time better had he shown that Sherman was ever ordered not to agree to an armistice, not to suspend hostilities, not to cease fighting when the only Rebel General in the field offered to give up the whole Confederacy, dismiss all the Rebel armies and restore all the seceded States to the Union. Secretary Stanton does not refer to any such orders in his telegram, and he has not yet produced them.

Now, having cleared away all the preliminaries of this affair, and demonstrated that Sherman was in the right in holding conferences with Johnston, and that no evidence has yet been presented proving him in the wrong in granting an armistice, let us examine the objections offered to his memorandum of agreement, and see how far they are valid:

The first objection is that "it was an exercise of authority not vested in General Sherman and on its face shows that both he and Johnston knew that he had no authority to enter into any such arrangement." Very good; but unfortunately not original. General Sherman had stated these facts to Johnston and they appear in the memorandum. Sherman says, "Not being fully empowered by my principal to fulfill these terms, I individually and officially pledge myself to promptly obtain the necessary authority." Why, that was precisely the reason why he sent the memorandum to Washington. He knew he had not the authority, and he asked the President to ratify his agreement. The first objection is therefore silly. The second objection is that "it was a practical acknowledgment of the Rebel Government." Well, Sherman acknowledged the Rebel Government only far enough to accept the surrender of the whole concern. It seems to us that everybody would have been satisfied with such an acknowledgment. The Confedera-

ey would not have gained much by it. On the whole, we fear that this objection is as silly as the first.

Thirdly, "it undertook to establish the Rebel State Government" and "placed arms and munitions of war in the hands of the Rebels at their respective capitals." Will Secretary Stanton please to recollect that there would have been no Rebels had Sherman's terms been approved? The members of the seceded State governments were "to take the oath prescribed by the Constitution of the United States," thus placing themselves in the Union and under our laws. The "arms and munitions of war" were to be "subject to future action of the Congress of the United States," so that Congress could have removed them from the State capitals immediately. This objection is as invalid as the others. The fourth objection is that the Rebels "would be enabled to re-establish slavery." But the South can re-establish it in any event if the Constitutional Amendment be not adopted by the States, and if the Supreme Court does not decide the Emancipation Proclamation constitutional. But, on the other hand, if the Amendment be adopted, or the Proclamation pronounced Constitutional, then slavery cannot be established, even if there were anything in the terms of agreement—which say nothing about slavery—to re-establish it. Objection number four consequently fails.

Fifth, "it might furnish a ground of responsibility to pay the Rebel debt." Here is an objection based on a "might," to which we only reply that "it might not." But "it certainly subjects loyal citizens of the rebel States to the debt contracted by the Rebels in the name of the State." It seems to us that the Rebel debt would be repudiated by the terms of re-union, so that no one would have anything to pay. But if the debt is to hold good on the State, we should like to know how loyal citizens can escape their share of it, since everybody would claim to be loyal so soon as a special tax were decreed. It is a new idea that our Secretary of War should recognize and urge the payment of the Rebel war debt. He must have been hard pushed for objections when he selected number five. Objection sixth is that "it puts in dispute the existence of loyal State governments, and the new State of Western Virginia, which had been recognized by every department of the United States government." What loyal State governments? That of Louisiana, for instance, which Wade and Winter Davis pronounce without actual existence? And how does it put them in dispute? Simply by "submitting them to the Supreme Court."—Cannot they stand this test? Has Stanton no confidence in Chase? As for Western Virginia, what has she to fear when she "has been recognized by every department of the United States Government?" Objection the sixth is very, very feeble. Seventh, "it practically abolishes the Confiscation law and relieves Rebels of every degree from all pains and penalties."—

This is an untrue assertion. The Confiscation laws were passed by Congress, and the "degree" of Rebels to be pardoned is fixed by Congress. The agreement promises an amnesty "so far as the Executive power of the United States can command." As the Executive cannot disobey or reverse the laws of Congress, the confiscation laws would remain in full force, and "the pains and penalties" could be applied to rebels above a certain rank, as provided by Congress in the authority given to the President to freely pardon all Rebels under a certain rank. The seventh objection is consequently false and void. The eighth objection is that President Lincoln "deliberately, repeatedly and solemnly rejected" the same terms—which, if true, does President Lincoln no credit, and, if false, is an insult to his memory—"and gives the Rebels better terms than they had ever asked in their most prosperous condition"—which we know to be untrue, for the Rebels asked the recognition of their Confederacy. Objection eight falls for these reasons. The ninth and last objection is that it "leaves the Rebels in condition to renew their effort to overthrow the United States Government whenever their strength is recruited and any opportunity offers." Not more than any other peace would.—Not so much as Grant's agreement with Lee does. On the contrary, the terms of Sherman would have taken the rebellious heart out of the Rebels, and given us the quickest, surest, and most lasting peace.

The Rebel Johnston has since surrendered on Grant's terms to Lee, and Stanton will undoubtedly claim this as a great victory, and exult accordingly. But it is not so great a victory as Sherman would have gained. It merely secures to us Johnston's command, while Sherman would have given us the whole Confederacy. It settles nothing for the future, while Sherman's plan provided for reconstruction. Secretary Stanton may telegraph as he pleases, and flourish in dispatches as each little squad of Rebels follow Johnston's example; but this prolonged surrender is not so decisive as the immediate, complete and comprehensive surrender which General Sherman had arranged. It is better to be right than to have all the bluster on our side. Sherman, grasping all the issues, concluded to do at once that which is now to be done in detail.—No sound objections were offered to his plan; the objections which were offered seem extremely foolish, and the manner in which they were prefaced, and the temper in which they were stated, imply less of hostility to the Rebellion than of anger to a General who has presumed to do something unexpected. But Sherman has always done unexpected things. He is a genius and his mind grapples and solves the most perplexing problems. We can imagine the mingled indignation and astonishment with which he must have received the arrogant telegrams of Mr. Stanton, and we shared his indignation and his astonishment.

ishment alike. Whether he be popular or unpopular, honored or disgraced, we insist that General Sherman's plan of pacification was a good one, that it practically assured to us all for which we have been fighting, and that all intelligent people will so regard it when this great and patriotic General is heard in his own defence.

From the Cincinnati Commercial.

A WORD FOR SHERMAN.—No. 1.

This gallant soldier has been denounced in no measured terms; his great services are ignored, and for one error all the past is forgotten. He is again called a madman in one breath, and a political schemer in the next. A cruel ingenuity perverts his attempt to restore peace to the low ambition of a political demagogue, seeking personal advantage by the sacrifice of the great cause in which he has so often risked his life and gained his laurels. The cause of justice requires that we give a fair consideration for this one act for which he is so unmercifully denounced. Let us not too readily follow the lead of those who are so ready to destroy such a man, and to impute to him motives for that act wholly at variance with his character and antecedents.

On the 18th inst. General Sherman and General Johnston signed a "memorandum or basis of agreement." It consists of seven articles, all of which except the first, are left, certainly, so far as Sherman is concerned, for the consideration of his superiors, to be ratified, modified or totally rejected as may seem best. The only point which Sherman undertakes to settle himself, is the armistice, the temporary suspension of hostilities to continue only until the decision is made upon the other articles by the proper authorities, and then to cease upon forty-eight hours notice, if the terms are rejected. This I repeat, is the only point which Sherman agrees to in the sense of a binding stipulation, or as within his own just authority.

Certainly no one can doubt the power of a commanding officer, where two armies confront each other, upon a sudden emergency, to agree to an armistice between their forces. The most usual exercise of this power is to bury the dead. The common right of humanity requires such an authority. So, too, touching the living as well as the dead, if there is a proposition which will stop the further effusion of blood, and which involves points beyond the authority of the General in command, and which he deems to be worthy of consideration, it is not only within his power, but it is his duty to entertain them, and to stop further slaughter until the matter can be submitted to those functions it is to decide.

Now let us treat Sherman fairly, for we are now considering his motives. The articles contained in the memorandum may

not recommend themselves to us, but what warrant have we to say that they did not recommend themselves to Sherman?—I am one of those who believe that there is not a man in the Republic, in the field or in civil life, more frank, more earnest, more devoted to the cause, and more unselfish. Furthermore, now that Abraham Lincoln is gone, it is difficult to find a man whose views are more comprehensive of the whole character of the great struggle through which we are passing.

Certainly, he was among the first—if not the very first—to comprehend it in the beginning. He was flippantly written down as insane for the prophetic declaration then made. He was altogether right then; he may be altogether wrong now.—*Perhaps not.* The future may deceive him; probably it may deceive us.

Next, let us see for ourselves what this “memorandum” really signifies; and, in this connection, let us carry along the strictures upon it that are said to come from the Cabinet.

The first article provides that the contending armies commanded by Sherman and Johnston respectively, are to remain in *statu quo*, until the decision is made. This, as I have said, is the only article which Sherman claims to settle on his own authority.

It holds Johnston and his army fastened to the spot. It gives them no opportunity to retreat. It is a pledge that they will not escape. If a single brigade attempts a flight, the armistice is broken, and Sherman, who is there to watch, is also there to pursue.

The second article provides for the disbanding not only of Johnston’s army but of all the Confederate armies then “in existence.” Every one of these armies is to be broken up, and its soldiers are to be conducted in detached bodies to the capitals of their respective States, and there deposit their arms in the State arsenals.

Observe, there is no article which looks to the disbanding of any of *our* armies—not one loyal soldier is to be disarmed.—Wherever we have an army, a military post, or a camp; wherever we occupy a fortress or a city, our rightful position there is not changed or disturbed, and our soldiers are to remain until we see fit to recall them.

Observe now, that the arms are to be deposited in the arsenals of each State, at the “State capitals.” Pray, into whose custody do they come? Nearly all their State capitals are in our possession; every person and everything they contain is in our power. If there is any State capital not yet in our possession, we have the right to send our soldiers there the moment these articles come into force; for at the same moment the Federal authority is acknowledged all over the South, and the Government, through the War Department, may order our

soldiers to any place in the South, by the same authority it has to order them to any place in the North.

The objection taken to this article at Washington is, that it places "the arms and munitions of war in the hands of the rebels, at their respective capitals, which might be used as soon as the armies of the United States were disbanded, and used to conquer and subdue the loyal States."

But, if these consequences are to follow, whose fault will it be? Certainly not Sherman's. If these arms "might be used as soon as our armies are disbanded," or as soon as we withdraw the force necessary to their safe keeping, we will know where to fix the responsibility. Sherman certainly has not disbanded our armies; he has not withdrawn our custody over those arms, but exactly the contrary, he stipulates that they shall come right under our own guns, and be subject to our military vigilance. If these same arms might be used after the men who carried them are dispersed, if they are such dangerous articles when in our power, it seems to me they are a little more dangerous when they are in the hands of a veteran army.

There is a provision with respect to this deposit of arms that does not seem to be understood. It is that, until Congress otherwise provides, they are to remain at their places of deposit "to be used solely to maintain peace and order within the borders of the States respectively." This is one of the ordinary safeguards provided in every State for its own tranquility. I do not know of one which has not this protection against domestic insurrection. It is of such vital importance that it is secured to every State by express constitutional provision.—Certainly all over these Southern States there is danger of "domestic violence" contemplated by the Constitution. There is no safety there if the white population is disarmed. Allow them means of defense against a terrible danger, but see to it that they use these arms, as the memorandum has it, only to maintain order.

I think we have gone far enough with this memorandum to reach, at least, one safe conclusion, and that is, that it effectually destroys the military power of the confederacy. It puts an end to the war without shedding another drop of blood.—We can afford to pay a high price for such a consummation. If there is a calamity to ensue, equal or greater than the one which it removes; if the price is out of all proportion with the benefit; if the bad outweighs the good; if the mischiefs of peace that is to come are greater than the war now waged; if this certain deliverance is no more certain than a future and better deliverance, why then, let the war go on. It is a grave question to consider, and an awful responsibility must attend its decision.

SIGMA

A WORD FOR SHERMAN—NO. 2.

In a former communication I considered the first and second articles of the "*Memorandum*." The next four articles provide for the state of things which is to ensue when the rebels have laid down their arms and have submitted themselves to Federal authority.

The first inquiry that arises here is this: Why did Sherman entertain or receive any proposition, beyond that of the surrender of Johnston's army? Why did he not follow exactly the precedent between Grant and Lee?

A moment's reflection will show us that the matter in treaty between Sherman and Johnston was altogether different from that between Grant and Lee. Lee only proposed to surrender the army then in the field under his immediate command.— Johnston proposed to disband *all* the armies in the Confederacy. Lee did not propose to put an end to the war. Johnston did. Lee asked and obtained terms for every soldier and officer embraced in his surrender, for he compromised no others. Johnston asked for terms for every officer and soldier, and for every citizen or rebel, embraced in his surrender, for he compromised every one of them. If it was proper for Lee to ask for terms for his soldiers, it was quite as proper for Johnston to ask for terms for all the rebels, armed and unarmed, soldiers and civilians, for he surrenders them all.

This explains Sherman's course. It appears that a proposition for surrender came from Johnston, and that Sherman, at first understanding it only to cover Johnston's army, promptly replied that he would give the same terms as Grant had given Lee. But when Sherman came to understand that the proposition was of a very different and vastly more important character, the precedent did not apply. Other interests were involved besides those of the army of Johnston, and it was proper to consider them.

Now, to show that Sherman had jurisdiction (if I may express myself as a lawyer,) to entertain terms beyond the mere surrender of Johnston's army, put the case that the terms offered by Johnston were that the rebel armies should be disbanded, and that the mass of the people, excluding the leaders, should not be punished, would Sherman have been justified in saying, "I can not entertain such terms, for they provide for a partial amnesty, and for others besides the soldiers of your army?" Sherman, therefore, did not go beyond his proper limits in receiving and considering terms more comprehensive than those fixed in the precedent of Grant and Lee.

Now, next, what are these terms? No one was bound by them. They are now abrogated. More strictly speaking, they never came in force. We don't know how they were received by Johnston's "principles," but we do know how they were

received by Sherman's "principals." They were rejected *in toto*; not modified in a single particular, nor, as far, as we hear, was any counter-proposition sent back, not even on the basis fixed by Mr. Lincoln, and made known to the rebel commissioners before Richmond, as the terms to which he would agree. Not a word as to an amnesty, general or special. Not an intimation whether the States in rebellion should be allowed to come back, either with slavery or without slavery. Not a hope held out that the policy of the dead President was to be the policy of his successor.

But, again, what are the terms? A general amnesty is one of them. Upon this feature of the memorandum, the official commentary is in these words: "It practically abolishes the confiscation laws, and relieves the rebels of every degree, who had slaughtered our people, from all the pains and penalties of their crimes."

There is not a word in the memorandum that abolishes practically, or otherwise, a single law of the United States. It leaves the confiscation law untouched. But it does provide for a general amnesty. Did Sherman commit an error in entertaining that policy? If so he fell into the error by following the lead of Mr. Lincoln, for *that* was his policy. That was one of the terms of settlement which Mr. Lincoln was ready to offer.

It seems, however, that it is not the policy of the present administration, and that just now it is not a popular policy. It is announced that there shall be an amnesty for the people, but not for the leaders. They are to be tried and hung. Let us bring this policy to the test of common sense.

1. Who are the leaders? Who is to designate them? Who is to mark this man for punishment, and that man for deliverance? Who is this political censor with the issues of life and death in his hands?

2. We have deliberately recognized these rebels as belligerents—and we have entered into cartels with them for exchange of prisoners—for the exchange of all prisoners, of all grades—without one exception. Suppose we capture Davis himself—or that he voluntarily surrenders himself as a prisoner; pray what can we do with him? Can we punish him? Can we try him by a Military Court, or any other court, for the offense of levying war against the United States? Not at all. We are bound to treat him as a prisoner of war. If the war continues, he is to be exchanged; if it ceases, he is to be discharged from custody. We must protect him as a prisoner of war; we must save him from mob violence, and give him safe conduct, if he require it, when the proper time comes for his release. These are sacred duties which we have imposed on ourselves, yielding to an inevitable necessity when this rebellion took the form of a mighty war between millions of belligerents.

But, some say, the military offense can not be punished, but the civil offense remains, and is not provided for or condoned by the cartel. We admit we can not punish the soldier, as a soldier, though taken red-handed in levying war upon us. We must treat him as a prisoner of war—feed, clothe, protect, and give him safe-conduct beyond our lines. We admit all that, but if, after the war is over, we can again capture him, then, for the same offense, we can hang him. It does not strike one that this is safe ground to rest upon; but suppose we admit it to be sound. What are we to do with the new captives?—Take Davis, for instance. If we abide by the cartel and discharge him as a prisoner of war, and, after he is quite beyond our power, he sees proper to place himself again without our reach, and we arrest him for the civil offense, how are we to punish him. He must be tried for treason, but where? In Massachusetts? Can we select the place most favorable for a conviction? No; he must be tried in Richmond, or, perhaps in Alabama, but, at least, in some State where he committed some overt act of treason; in other words, somewhere in one of the rebellious States Davis must be tried. He must be tried as all other criminals are tried, by a jury of the State or judicial district in which his trial is had. He must be tried, if at all, by an impartial jury; by a jury of twelve men, not one of whom has formed or expressed an opinion as to his guilt or innocence.

When we come to look the matter square in the face, the idea of applying the common rules and forms of criminal proceedings to all, to an undefined part or to a single individual engaged in the same gigantic war, which reckons its criminals by millions, seems flatly absurd.

Say what we may, not a man, great or small, leader or follower, will be hung, shot or beheaded, for the crime of levying war against the United States, as a party in this rebellion. If he was a spy he might be shot; if he conspired or took a part in the assassination of our President, the cartel would not protect him, for that was not war or protected by the rules of war; but if he only levied war in the same open and regulated mode in which the two or three millions of his associates levied and carried it on, the same defense that protects them must protect him.

So much for the general amnesty feature of the memorandum. In another number we will follow up the subject.

SIGMA.

A WORD FOR SHERMAN--No. 3.

The circumstances of the times are not favorable to calm discussion. The public mind is in a state of excitement. At such a juncture we are apt to rush with great unanimity to a conclusion which a sober, second thought obliges us to reverse. Recollect the Trent affair.

Sherman does not forget, for a moment, that he has a superior. He is careful to name that superior no less than five times in the "memorandum." Every thing, ex-

cept the temporary truce, is to await the decision of the "Executive of the United States." Johnston, too, recognizes the fact that he is a subordinate—that he, too, has a superior; but who his superior is does not appear any where in the "Memorandum." We may guess, and not be wide of the mark, that his "principal" was Davis, either as the chief executive officer, or as his Commander-in-chief. One thing, however, is certain—Sherman would not allow that principal or even the "confederate States," to be so much as named in that paper; and Johnston submits to the humiliation. It appears that Breckinridge took a part, no doubt an active part, in the negotiation—whether as a civil officer, or in a military capacity, is not shown, but his name does not appear in the paper, nor is he allowed to sign it.

The official comment upon the form of this negotiation is thus stated: "It was a practical acknowledgment of the rebel Government." In other words, whoever enters into any conference with any agent, civil or military, of that rebel Government, to fix upon the terms of its dissolution, practically recognizes it. Whoever entertains any proposition coming through an agent of that government, for its surrender, abdication and destruction, gives it thereby a title of legitimacy. If that is so, what are we to say of Mr. Lincoln and Mr. Seward? What are we to say of that conference in which our President and our Secretary of State met Messrs. Campbell, Hunter and Stephens, the last named second in official rank to Davis himself?

Undoubtedly there is a punctilio to be observed in that sort of left-handed diplomatic intercourse. Sherman understood this perfectly well, and, therefore, in the matter of form, the "*memorandum*" is unexceptionable.

Proceeding with the terms of the "*memorandum*" we come to the third article, which I quote in full:

"The recognition by the Executive of the United States of the several State Governments, on their officers and Legislatures taking the oath prescribed by the Constitution of the United States; and where conflicting State Governments have resulted from the war, the legitimacy of all shall be submitted to the Supreme Court of the United States."

As the latter clause of this article is made the subject of special criticism in the official commentary, I will consider it first in order. That commentary is as follows: "It put in dispute the existence of the loyal State Government, and the new State of West Virginia, which had been recognized by every department of the United States Government."

This is new to me. If that department of our Federal Government called the Supreme Court of the United States has yet recognized, in the only way in which a Court can recognize, that is by a decision, the lawful existence of West Virginia, I, for one, have failed to see or hear of the decision. No decision would give me more satisfaction. I consider that the legal *status* of West Virginia is, and must be, fixed by the recognition of the Executive and the sanction of Congress. But the final arbiter has not yet so decided.—It is an open question, and there is no power in the land to withdraw that question from the cognizance or jurisdiction of that high tribunal. It must go there when the proper case arises. Virginia and West Virginia—the two governments contending for legitimacy over that territory—must go before the same court that settled the question of legitimacy between the charter government and Dorr's government, in Rhode Island.

If Sherman had signed a memorandum to refer the question to foreign arbitration—say to Maximilian or Louis Napoleon—he would have done a very silly thing. Or if he had opened a question fully set at rest, he would have done a very unwise thing. He has done neither. He has simply recognized the inevitable fact that the ultimate decision must be made by the Supreme Court. There he was willing to have it, and so am I; but willing, or unwilling, there the question must go.

We now come to the stipulation which provides for the recognition by our Executive of the several State Governments. This recognition is one of the consequences which is to follow the ratification of the memorandum, but it is not an immediate consequence. First of all, the power called the confederacy, its armies, its officers and its subjects, disappear. Federal laws and Federal Courts come into place. Every officer of every State, every member of each State Legislature, is first to take an oath to support the Constitution of the United States. Then, and not until then, they are to be recognized. And by whom? *By the executive authority.* Observe there is not one word in the memorandum that applies to any recognition by Congress. It happens that at the time Congress is not in session. This confederate government is to surrender at once, but the States remain, the people remain, and for the time being, at least, for the interim, between the surrender and the next meeting of Congress, some provision is to be made by the only authority capable to act in the emergency, and that is the executive authority.

This is the first and the necessary step to be taken in order to get these States fully clear of all disloyal relations. The recognition is to be mutual. These States first recognize our President as their President. They abjure the Government and the Executive which they had adhered to for four years, and ask to re-establish the old relations; and to come at once under the power and under the protection of the Executive authority. All they ask is present protection—protection to life and property and franchises; just so far as our President, *under the laws*, can afford protection. Sherman knew well, and so did Breckinridge, that a recognition by the Executive, and protection to property and franchises, meant only such recognition, and such protection, as the Constitution and Laws of the United States allowed the Executive to give. There is not a word in that "*memorandum*" that stipulates for a change beyond the just power of the President. On the contrary, it contemplates nothing to be done by the President beyond his lawful authority—or as it is worded in one place, so far as the Executive can—and

in the summary, "so far as the Executive power of the United States can command." It leaves the proclamation of freedom, and the various acts of Congress declaring emancipation in the rebel States, wholly untouched. It leaves the great question of reconstruction—a matter beyond the Executive authority—wholly untouched. It settles nothing but recognition of loyalty, and present protection, until the rightful authority shall decide the great questions which remain in abeyance. SIGMA.

A WORD FOR SHERMAN—NO. 4.

I have called attention to that article in the "*Memorandum*" which provides for the recognition of the States—by the Executive—the recognition of the organized body which constitutes the State, made up of citizens and officers, civil, judicial and legislative, after all of them have done everything in their power to cut loose from their disloyal relations. I have said it provides for Executive recognition alone; for a recognition *ad interim*; for just such a recognition as the Executive may be authorized to make. So too, in the fifth article, as to the individual rights, it is declared:

"People and inhabitants of all States to be guaranteed, so far as the Executive can, their political rights and franchises, as well as their rights of person and property, as defined by the Constitution of the United States and the States respectively."

The official commentary on these articles is as follows: "By the restoration of the Rebel authority in their respective States, they would be enabled to re-establish slavery." Undoubtedly if this "*Memorandum*" provides for the restoration of rebel authority, if all the provisions for breaking up the military power of the rebellion, and for abjuring allegiance to it, if the disbanding of their soldiers, the surrendering of their arms, the annihilation of that specter of a government known as the Confederate States, if all these articles mean only that the rebel authority is to be restored, if this is the fair and rational construction of this "programme," then let us accept the official gloss as its true interpretation.

But it does not follow, because the official objection is unsound, that there is no other or sounder objection. There is much in these articles to challenge attention, and to produce an unfavorably first impression. It is not a paper that he who runs may read, and be sure that he reads aright. There is a sententious brevity about it, characteristic of Sherman. Very much taken for granted; no long verbal expletives; no exclusions of all possible misunderstandings; no skillful word-weaving, after the manner of a diplomatist; no careful conditions, provisos, and exceptions, after the manner of a lawyer. It is the work of a soldier, going to the point at once, written with port-folio on knee, and struck off with the rapidity of an order or a dispatch. I wish some friend had been present to call Sherman's attention to certain language that might be misunderstood, or to the propriety of adding expressly what was left to inference. It was all clear enough to Sherman as it stood. He understood perfectly well its whole scope and just meaning, and therefore it was that he sent it to Washington with perfect confidence that it would be ratified.

I can see, in every word of that document, that Sherman felt he was following the lead of Mr. Lincoln, and initiating the very state of things which Mr. Lincoln had overshadowed.

There is in it the provision for a general amnesty. That, certainly, was Mr. Lincoln's policy, and that, at least, was fully within the Executive control. By the act of Congress to suppress insurrection, passed July 17, 1862, the whole power of pardon and amnesty "to persons who may have participated in the existing rebellion," is given to the President. The act makes no exception as to leaders—not even as to the chief of traitors himself.

There is a provision in the "*Memorandum*" which applies to Legislatures in the Southern States, as bodies which may be recognized by the President. Is that strange? Is that a new idea? Was not Sherman perfectly well advised of the recent fact that the President had given his consent to the reassembling of the Virginia Legislature? What a fatal mistake our great chief must have made, if the convocation of that Legislature would have restored "the rebel authority" in Virginia, and would have enabled that State "to re-establish slavery."

There is perhaps no part of the *Memorandum* which has been so much misunderstood and perverted as that which provides for a guarantee by the Executive, "so far as he can," to the people of the States, "of their political rights and franchises, as well as their rights of person and property." Some imagine that by adopting this provision, our Executive would restore the old state of things as before the war, and set aside all the laws of Congress, and all the proclamations which have been made.

It is said that under this guarantee, Davis and Toombs, and all the leaders in the rebellion, would be restored to all their personal rights and franchises, and made competent to sit in Congress, and to regain all their property, including their slaves emancipated by the laws and proclamations which have been passed and made.

Nothing could be further from the truth. The President can not repeal a law. Not one of these men could take a seat in either House of Congress. They are disqualified by law. The President could not guarantee to one of them the right to become a member of either House, for that power belongs exclusively to Congress.

Each House is "the judge of the qualifications of its own members." So that if these traitors ever get into Congress again, it will not be the fault of Sherman, but of Congress.

Then, as to slavery and the rights of property in slaves—and the rights of property in estates or things confiscated or subject to confiscation. The "*memorandum*" leaves all

these subjects precisely where they stand. If the proclamation has emancipated the slaves in the rebellious States their *status* is fixed beyond recall. No new proclamation can make a slave of a man now free.

So, too, if the various acts of Congress have been effectual to destroy the relation of the slave to his rebel master, no act of the Executive, no guarantee of the President, and no act of Congress can restore that relation. If, after all this, the slave is not emancipated, then there is but one remedy left—the most effectual of all—and that is the amendment of the Constitution. That is sure to come, and it will cut up by the root every vestige of Slavery, even in loyal States, yet untouched by proclamation or act of Congress.

We have now reached a point at which, in the consideration of these articles, Sherman, as the immediate party, must drop out of consideration, for here are foreshadowed the elements of a political contest in which we must all take a part. No matter in what way, or at what time, whether now, by surrender unconditional, or hereafter, by surrender under terms agreeable to the Executive, this rebellion may cease, a question of profound importance will arise, a question beyond Executive control, a question for the people, and to be settled by the people.

That question is, what shall be our policy as to those States once in rebellion, and as to the people which inhabit them.

The great leader we have lost indicated what policy he deemed the wisest. It was quite evident that *his* policy was not accepted in certain quarters, and that the materials of opposition to him were gathering head, and had made a demonstration in the Louisiana case.

His policy was amnesty, and the restoration of States once in rebellion to their proper relation to the Union. In the first clause of his great proclamation he declares "that hereafter, as heretofore, the war will be prosecuted for the object of practically restoring the constitutional relations between the United States and each of the States and people thereof, in which States that relation is, or may be, suspended."

According to Mr. Lincoln the States remain as States, and the inhabitants are citizens of the States, only out of their proper constitutional relation.

His policy was not to dissolve all the elements which constitute a State, and turn each political community called a State adrift, without local laws, or local government. His policy (mark it, *after* the war,) was not to abolish State Courts, State Executives, State Legislatures, and to leave the people without law, without Sheriffs, without jails, without franchises.

His policy was not to hold them as people within the Union—native born, too, and yet stripped of the suffrage, degraded to some anomalous condition—neither citizens of States nor Territories, with no security for life or property. He could not be brought to look upon them as a conquered people, and upon the States as destroyed by war.—No, Mr. Lincoln never lost sight of the States. He intended to recognize them, after the war, as *States*, with all the franchises and rights, public and private, that, under the existing laws and proclamations, the war had left to them.

So at least, for one, I understood Mr. Lincoln. That is the policy of the "*memorandum*." Though it is a matter of little consequence to any one but myself, yet I must say that, for one, I prefer Mr. Lincoln's views to those of Mr. Sumner, or any one of that class.

SIGMA.





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